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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 United States of America, *ex rel.* Joel Lynn,
10 Plaintiff/Relator,

11 v.

12 Delta Career Education Corporation,
13 Defendant.
14

No. CV-15-00719-PHX-SMM

ORDER

15 Pending before the Court is the United States of America's Motion to Dismiss
16 pursuant to 31 U.S.C. § 3730(c)(2)(A) and Federal Rule of Civil Procedure 12(b)(6). (Doc.
17 126.) Plaintiff/Relator Joel Lynn ("Relator") did not file a Response. For the reasons stated
18 herein, the Court refers this matter to the Bankruptcy Court for the Eastern District of
19 Virginia for adjudication.

20 **BACKGROUND**

21 Relator filed this *qui tam* action under the False Claims Act ("FCA") for himself
22 and on behalf of the United States to recover damages and civil penalties arising out of
23 false statements and claims made by Defendant pursuant to the Higher Education Act of
24 1965, Title IV as amended, 20 U.S.C. § 1070 (2000), et seq. ("HEA"). (Doc. 25 at 1-2.)
25 The Government declined to intervene. (Doc. 12.)

26 Defendant moved to dismiss Relator's complaint arguing that Relator had not pled
27 (1) a violation of the HEA incentive compensation ban; (2) a violation of the
28 misrepresentation provision under the HEA; nor (3) facts showing the essential elements

1 of a FCA claim, including scienter and materiality. (Doc. 39 at 3.) The Court granted
2 Defendant's motion to dismiss Relator's allegation that Defendant knowingly violated state
3 law under the federal FCA, and the Court denied Defendant's motion to dismiss Relator's
4 claims regarding the incentive compensation ban and the substantial misrepresentation ban.
5 (Doc. 60 at 15.)

6 On June 13, 2018, Relator's counsel moved to withdraw as counsel with Relator's
7 consent (Doc. 122 at 1-2), and the Court granted counsel's withdrawal (Doc. 123 at 2).
8 Shortly thereafter, Defendant filed a bankruptcy petition in the Bankruptcy Court for the
9 Eastern District of Virginia ("Bankruptcy Court"). See In re Delta Career Educ. Corp., No.
10 18-33822-KLP (Bankr. E.D. Va. 2018). On July 30, 2018, Defendant filed a Notice of
11 Filing Bankruptcy with the Court asserting that this action be stayed pursuant to 11 U.S.C.
12 § 362. (Doc. 124 at 2.) The Government then filed the instant motion. (Doc. 126.)

13 DISCUSSION

14 I. Motion to Dismiss

15 The Government moves to dismiss this action pursuant to 31 U.S.C. § 3730(c)(2)(A)
16 and Federal Rule of Civil Procedure 12(b)(6) asserting that a *pro se* relator is barred from
17 prosecuting a *qui tam* action on behalf of the United States. (Doc. 126 at 1-2.) While it
18 appears that the Motion to Dismiss has merit, the automatic stay prohibits the Court from
19 ruling on the motion.

20 The filing of a bankruptcy petition operates as an automatic stay to the
21 "commencement or continuation" of a judicial proceeding against a debtor. See 11 U.S.C.
22 § 362(a)(1). An action taken in violation of an automatic stay is void. O'Donnell v. Vencor
23 Inc., 466 F.3d 1104, 1110 (9th Cir. 2006) (citation omitted). However, the Ninth Circuit
24 has recognized that a court's post-filing dismissal of an action against a debtor may not be
25 an impermissible continuation of a proceeding where the dismissal is "consistent with the
26 purpose of the statute [11 U.S.C. § 362(a)]." Dean v. Trans World Airlines, Inc., 72 F.3d
27 754, 755 (9th Cir. 1995) (quoting Indep. Union of Flight Attendants v. Pan Am. World
28 Airways, Inc., 966 F.2d 457, 459 (9th Cir. 1992)). In Dean, the Ninth Circuit clarified that

1 a “post-filing dismissal in favor of the bankrupt of an action that falls within the purview
2 of the automatic stay violates the stay where the decision to dismiss first requires the court
3 to consider other issues presented by or related to the underlying case.” *Id.* at 756.

4 Here, the Government seeks a post-filing dismissal of this action pursuant to §
5 3730(c)(2)(A) and Rule 12(b)(6). However, the Court finds that dismissal based on either
6 ground would violate the automatic stay.

7 First, the standard for dismissal pursuant to § 3730(c)(2)(A) requires a court to
8 engage in a “two step analysis” to assess the Government’s justification for dismissal. *See*
9 *United States ex rel. Sequoia Orange Co. v. Baird-Neece Packing Corp.*, 151 F.3d 1139,
10 1145-46 (9th Cir. 1998) (stating that the test requires the Government to identify a “‘valid
11 government purpose’” and to demonstrate a rational relationship between accomplishment
12 of that purpose and dismissal; then the burden shifts to the relator “‘to demonstrate that
13 dismissal is fraudulent, arbitrary and capricious, or illegal.’” (citation omitted)). The Court
14 finds that this two-step analysis would require the Court to consider issues presented by or
15 related to the underlying case. Thus, dismissal pursuant to § 3730(c)(2)(A) would violate
16 the automatic stay.

17 Second, a dismissal pursuant to Rule 12(b)(6) operates as a dismissal on the merits.
18 *Federated Dep’t Stores, Inc. v. Moitie*, 452 U.S. 394, 399 n.3 (1981) (stating that “dismissal
19 for failure to state a claim under Federal Rule of Civil Procedure 12(b)(6) is a ‘judgment
20 on the merits’” (citation omitted)). Thus, dismissal pursuant to Rule 12(b)(6) would violate
21 the automatic stay because it would require the Court to consider the merits of this action.

22 Therefore, the Court finds that dismissal pursuant to § 3730(c)(2)(A) and Rule
23 12(b)(6) would violate the automatic stay.

24 **II. Referral to Bankruptcy Court**

25 Defendant’s bankruptcy proceeding calls into question whether Defendant’s
26 potential debt associated with this action is a nondischargeable debt in the bankruptcy
27 proceeding. The Court finds that this issue constitutes a “core proceeding” under the United
28 States Bankruptcy Code and should therefore be referred to the Bankruptcy Court.

1 Although federal district courts have jurisdiction over “all civil proceedings arising
2 under title 11, or arising in or related to cases under title 11,” 28 U.S.C. § 1334(b), district
3 courts may refer these proceedings to bankruptcy court. See 28 U.S.C. § 157(a); see also
4 General Order 01-15 (2001) (discussing the District Court of Arizona’s General Order
5 referring “all cases under title 11 and all proceedings under title 11 or arising in or related
6 to a case under title 11” to bankruptcy court). Furthermore, a bankruptcy court may
7 adjudicate “all cases under title 11 and all core proceedings arising under title 11, or arising
8 in a case under title 11...” 28 U.S.C. § 157(b)(1). Section 157 lists “determinations as to
9 the dischargeability of particular debts” as core proceedings. 28 U.S.C. § 157(b)(2)(I).

10 Here, this action constitutes a core proceeding because it involves the determination
11 of the dischargeability of Defendant’s debt. See 28 U.S.C. § 157(b)(2)(I). Relator brought
12 this action to recover damages from Defendant’s alleged false statements and claims made
13 in violation of the FCA. (Doc. 25 at 1-2.) Defendant subsequently filed a petition for
14 bankruptcy which triggered the automatic stay. (Doc. 124.) However, the bankruptcy
15 proceeding calls into question whether debt incurred as a result of this action, which is
16 premised on Defendant’s alleged false statements and claims, will be a nondischargeable
17 debt in the bankruptcy proceeding. Determining whether Defendant’s debt is dischargeable
18 is a core proceeding properly adjudicated in the Bankruptcy Court. Therefore, the Court
19 finds that this action should be referred to and heard by the Bankruptcy Court.

20 Accordingly,

21 **IT IS HEREBY ORDERED** that the Clerk of the Court refer this matter to the
22 United States Bankruptcy Court for the Eastern District of Virginia, Richmond Division,
23 to be considered in conjunction with In re Delta Career Educ. Corp., No. 18-33822-KLP
24 (Bankr. E.D. Va. 2018).

25 Dated this 20th day of September, 2018.

26 
27 Honorable Stephen M. McNamee
28 Senior United States District Judge

I hereby attest and certify on 09.21.18
that the foregoing document is a full, true and correct
copy of the original on file in my chambers in my court-
today.

CLERK, U.S. DISTRICT COURT
EASTERN DISTRICT OF VIRGINIA

by D. Skaps Deputy

BRIAN D. KARTH
District Court Executive / Clerk of Court
Sandra Day O'Connor U. S. Courthouse
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401 West Washington Street, SPC 1
Phoenix, Arizona 85003-2118

UNITED STATES DISTRICT COURT
DISTRICT OF ARIZONA
OFFICE OF THE CLERK



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September 21, 2018

Clerk, Virginia Eastern Bankruptcy Court
Spottswood W Robinson III &
Robert R Merhige Jr US Courthouse
701 E Broad St Ste 4000
Richmond, VA 23219-1888

RE: CV-15-00719-PHX-SMM
18-3382-KLP in re Delta Career Education Corporation

Dear Clerk:

In connection with the above-case, enclosed are a certified copy of the Order of Referral and a copy of the case docket sheet sent by certified mail.

Brian D. Karth
District Court Executive/Clerk of Court

By s/ D. Draper
Deputy Clerk

CC: Plaintiff/All Counsel

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